



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Neal & Company, Inc.
File: B-229733
Date: December 23, 1987

DIGEST

Award made pending an appeal of an initial adverse determination concerning small business status does not require a written determination that award is necessary to protect public interest and does not require notification to Small Business Administration.

DECISION

Neal & Company, Inc., protests the award of a contract to H&H Contractors, Inc. under invitation for bids (IFB) No. DACA85-87-B-0058, issued by the United States Army Corps of Engineers. The procurement was for road repair on Eielson Air Force Base, Alaska.

Neal, the low bidder, contends that the Corps should not have awarded the contract to H&H, the second low bidder, during the pendency of Neal's appeal to the Small Business Administration's (SBA) Office of Hearings and Appeals. Neal is appealing a decision of the SBA Regional Administrator that the firm is other than a small business concern.

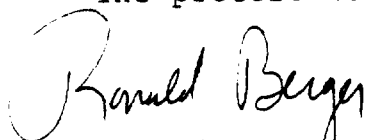
Specifically, Neal asserts that the Corps did not issue a written determination that award was necessary to protect the public interest as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(h)(1) (1986), and that the Corps did not notify SBA that an award had been made as required by FAR, 48 C.F.R. § 19.302(h)(3).

Under FAR, 48 C.F.R. § 19.302(h)(1), when a size status protest has been filed, a contracting officer may not make an award until the SBA Regional Administrator has issued a determination or until 10 working days after SBA's receipt of the protest, whichever occurs first. Although the regulations provide for an appeal from an initial SBA size determination by any concern that has been adversely

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affected, FAR, 48 C.F.R. § 19.302(i), once an initial determination has been issued, there is no requirement that the contracting officer then continue to withhold award pending a final ruling on an appeal from that determination. Similarly, although to make an award before the initial 10 days expire the contracting officer must make a finding that the award is necessary to protect the public interest, FAR, 48 C.F.R. § 19.302(h)(1), there is no such requirement for justifying an award during the appeal period. JRR Construction Co. Inc., B-220592, Oct. 4, 1985, 85-2 CPD ¶ 383. Likewise, the requirement in FAR, 48 C.F.R. § 19.302(H)(3), to notify SBA of award does not apply during the appeal period. Therefore, Neal has failed to state a valid basis for protest.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel